

Submission to

National ADR Advisory Council

Alternative Dispute Resolution in the Civil Justice System

Professor Kathy Mack, Law School

Flinders University, Adelaide, South Australia

The Issues Paper addresses a wide range of topics, and asks a large number of questions, on the very complex area of ADR and the civil justice system. Set out below are brief comments in response to a few of the points raised. Some comments are drawn from the report *Court Referral to ADR: Criteria and Research*. While NADRAC is well aware of this publication, I thought that highlighting some specific aspects that bear on the Issues Paper might be helpful. If clarification is needed or further comment would be useful, please feel free to contact me.

- 2.1** *To what extent is there a need for greater consistency in the use of ADR terms? How could this be achieved? What are the risks of greater consistency in the use of terms?*
- 2.2** *How does inconsistent use of ADR terms affect consumers and referral to ADR processes by courts, lawyers and others?*
- 2.3** *What are the advantages and disadvantages of adopting common process models for ADR processes, adopting standard definitions or adopting statutory definitions?*

No matter what labels or definitions are chosen for ADR processes, they tend to lose their boundaries in practice. Within a given ADR process, such as mediation, there is a great deal of flexibility or variability in the actual practices and features, which reflect differences in practitioners, providers, needs of disputants/dispute and the context. One particular consequence of this variability is lack of comparability of research undertaken in different courts or in different locations or at different times. This is especially so when considering research from the US, where it appears that court-connected mediation is often more directive or evaluative than is the (apparent) practice in Australia. This is not to say ADR process names have no value. "Mediation" is a useful term, as long as it is understood primarily as a description for a cluster or core of ADR features which can vary, more or less within a range.

- 4.1** *What are the benefits and drawbacks of court based ADR?*
- 4.4** *What role should courts have in facilitating or providing ADR?*

One of the major challenges for court based ADR is defining and articulating appropriate goals. Responses to many of the specific questions raised in the Issues Paper would differ, depending on the goals which court based ADR is expected to

achieve. The goals will guide the actual development and implementation of a court's ADR programs, and will be the reference points in assessing or evaluating the success of any programs. There are many possible goals which a court-connected ADR program might have, and some are listed in Appendix 1.

Most importantly, the goals must reinforce the legal and cultural/social authority of courts and judges. Only courts can enforce legal rights by deciding disputes according to law. Any ADR program for a court must serve that central purpose. However, interpreting and applying law is not the only function courts have. ADR goals must also support the wider dispute resolution role of courts.

Goals must be developed for each court, to reflect the views of its particular stakeholders and the distinctive location of the court in terms of its formal legal jurisdiction and its place among other Australian courts. Different stakeholders may have different goals and these goals may be complementary or they may conflict. For example, Resnik and Hensler each distinguish judicial preference for settlement from party preferences (Hensler 2002: 82-86; Resnik 2002).¹ A statement of goals must somehow address these differences.

Goals can be stated at varying levels of detail, with different degrees of specificity or generality, as has been done by McAdoo and Welsh. Some may be more aspirational: "change the legal culture". Some goals emphasise process features "fairness" or "satisfaction" while others identify desired results, such as "produce enduring outcomes". Others are expressed in terms of values, such as efficiency.

Some of the possible goals listed in Appendix 1 may have little or no applicability to a particular court in the Australian context; others might be of paramount importance. The choice of goals will be crucial for court based ADR program development, especially when linked with the available research. For example, if the goal sought is to shorten case processing time, research suggests that proactive case management may be better at achieving this. (Kakalik et al. 2000; Dywan 2003).

Some discussion of court annexed ADR treats adjudication and ADR as dichotomous. This can be misleading. Especially in a court with a strong commitment to case management, ADR and other approaches to settlement will interact with adjudication in a dynamic way, especially in longer, complex cases. Judicial determination, especially of particular issues at appropriate stages, can promote the use of various non-determinative processes to resolve other issues. Similarly, ADR and other processes can enable judicial determination and adjudicative resources to be focused on those issues or aspects of the case which must be subject to an authoritative and binding decision according to law.

However, the development of court annexed ADR, and its meaning for judicial authority has been controversial. In particular, there are concerns that some forms of court engagement with ADR can undermine institutional authority of courts and judges and take away from their core task of deciding disputes according to law. As

¹ Full details of references given in the text are contained in the bibliography for *Mack Court Referral to ADR: Criteria and Research*, and/or in the bibliography at the end of this submission, which also contains some additional references which may be of interest.

Chief Justice Spigelman has said, courts do not provide a “publicly funded dispute resolution service.... to litigants as consumers. This court administers justice in accordance with law and that is a core form of government” (Quoted in Astor and Chinkin 2002: 261).

On the other hand, proponents of court annexed ADR programs point out that “...the goals that have guided courts’ adoption of mediation programs...are grounded in the courts’ institutional mission to deliver justice—substantive justice, procedural justice and efficient justice in appropriate forums.” (McAdoo and Welsh 2004: 400). Wayne Brazil argues that there is “ample evidence that participation in a well-run ADR program can improve parties’ overall satisfaction with their experience in the judicial system.” (2006: 251). “[I]n a democracy, feelings about the quality and usefulness of services courts provide are important.... in themselves.” (Brazil 2006: 250-251).

Judicial dispute resolution

- 4.7** *What are the advantages and disadvantages of judges conducting ADR processes? In particular, what are the advantages and disadvantage of judges conducting mediation (as described under the National Mediator Accreditation System)? Are there particular cases where direct participation by judges in ADR is more appropriate?*
- 4.8** *To what extent is it an advantage of judicial involvement that it improves the chances of resolution? Why might this be the case? To what extent might this have negative consequences?*
- 4.9** *To what extent might the confidentiality of ADR be undermined if a judge conducts it? What reporting requirements might apply?*
- 4.10** *To what extent are judges’ skills and experience suited to facilitative processes like mediation, advisory processes like conciliation and blended processes like con-arb? How might judges’ skills differ?*

Judicial officers will vary greatly in their understanding of and attitudes towards ADR (Brazil, 2002: 124). Some judicial officers may lack sufficient direct experience of ADR (Sourdin, 1997). Acquiring and maintaining the skills and practice experience required under the National Mediation Accreditation System could be difficult for sitting judges, who already have obligations of professional development related to their core work of adjudication.

Some research suggests that judges and lawyers have been sceptical of ADR, at least in part reflecting a legal culture derived from professional training and experience in the civil litigation system of adversary adjudication or competitive legal negotiation (Hensler, 2002; Zariski, 1997).

Other research (Resnik, 2002) suggests that judges may have a strong commitment towards avoiding adjudication and favouring settlement, as reflected in rules of court and case management policies and practices, on the basis that that a negotiated

resolution will lead to a less costly and better substantive outcome for litigants. This attitude is expressed in the remark that “a bad settlement is better than a good trial”.

On the other hand, judicial officers may have relevant skills developed through case management, and their knowledge of settlement patterns within their court’s case mix can be valuable for ADR referral decisions (Astor, 2001: 31) and for the conduct of certain kinds of ADR processes, especially early neutral evaluation.

Judicial officers bring authority to the ADR process, which may be important if parties or their lawyers are reluctant to use ADR (Astor and Chinkin, 2002: 278).

Overall, the impact of who conducts the ADR process is not clear from the research. Ogus concludes that effective conciliation of child disputes in the UK (defined as reduced conflict, lasting and satisfactory agreements through satisfactory process) was least likely to be achieved in a court-connected program with high judicial control.

Overall ...conciliation appears to be most effective when it is disassociated from the judicial process. [T]he pressure from persons in ‘authority’ to reach speedy settlements, the often unduly narrow focus on a single disputed issue and the clients’ confusion between the different processes taking place at the court all inhibited the success of conciliation. (Ogus et al, 1990: 74)

Research in the US comparing sitting judges as mediators with private judge-mediators concluded that there was less time available in the public setting and the stronger focus was on settlement, whereas the private judge mediators had more time (Burns, 1998).

Court officer provided ADR

4.11 What are the advantages and disadvantages of having court staff such as registrars provide ADR services? What role might be most appropriate?

4.12 What are the advantages and disadvantages of courts engaging specialist ADR practitioners to provide ADR? What are the advantages and disadvantages of courts engaging ADR practitioners with particular expertise, eg accounting, engineering, psychology, etc?

Referral to a suitably trained non-judicial court officer enables ADR supported by at least some of the authority of the court. A non-judicial court staff member is also more likely to have (or to be able to acquire and maintain) current ADR skills and knowledge than a judicial officer, whose primary commitment must be to the skills and knowledge of adjudication and substantive law.

Although the role of court staff is not isolated as a specific factor in research studies, the importance of trained court staff with specific responsibility for the ADR program is mentioned in a range of contexts (Bickerman, 1998; Cannon, 2002; Kloppenberg, 2002; Shusterman and Burrows, 1998; Smoyer, 1998; Stienstra, 1998: 268-271).

In-house programs have considerable policy and practical advantages. On one view, court-sponsored ADR programs must be in-house, to ensure that courts meet their obligations to provide public justice, to maintain their legitimacy and provides basic elements of procedural fairness (Brazil, 1999: 747; Hensler, 2003). Judges interviewed as part of the Missouri early assessment program stressed the need for high quality in a court-annexed program which is easier to provide if there is court control. In-house programs avoid the concerns expressed in one US study that service providers, especially community mediation services, who are dependent on court referrals for sufficient business may accept unsuitable referrals (Hedeen and Coy, 2000). There is no explicit suggestion of this in the research involving Australian ADR services.

Scheduling is also easier if there is a dedicated staff member providing ADR, which can contribute to ADR success.

In its advice to the Attorney-General regarding ADR in the Federal Magistrates Court, NADRAC pointed out that a specialised non-judicial officer would be less expensive than a judicial officer (National Alternative Dispute Resolution Advisory Council (NADRAC), 2001).

The role of a court staff member who makes ADR referral decisions is often referred to as a "gatekeeper". John Braithwaite has suggested a more positive metaphor for this role: "pathfinder" (Family Court of Australia, 2002: 62). Certainly, many litigants approaching courts, especially those who are unrepresented, will need guidance about ADR as well as about litigation processes.

- 4.13** *What are the advantages and disadvantages of private ADR services and those provided by industry groups?*
- 4.14** *What are the advantages and disadvantages of existing ADR services provided by community organisations?*
- 4.15** *What are the benefits and drawbacks of existing government ADR services?*
- 4.16** *What are the advantages and disadvantages of courts referring matters to external ADR practitioners?*
- 4.17** *What are the advantages and disadvantages of providing specialised assessment, referral and dispute resolution centres outside the courts? What would the functions of such bodies be? How might they be resourced?*
- 4.18** *What is the appropriate role of government funding in relation to private and community ADR services?*
- 4.19** *To what extent is there a need for more, or more highly specialised, private, community based or government ADR services?*

Even if a court makes a referral on a considered basis, good service providers must have an intake process which makes an assessment for suitability for their own service. Even in services which, for some reason, lack a significant intake process, part of the ADR process will inevitably involve an ongoing, if implicit, decision of suitability, as the provider retains the power to terminate the process.

Selection of disputes for ADR must involve significant understanding of ADR combined with an ability to assess aspects of the dispute and the parties. A good intake process would include consideration of all these elements.

US research suggests that service providers, especially community mediation services which depend on court referrals for sufficient business, may accept unsuitable referrals (Coy and Hedeem, 1998). There is no explicit suggestion of this in the research involving Australian ADR services.

It is essential to be clear about the provider's ability to reject an unsuitable referral, and this is especially important when the service provider/practitioner is external. Even with the most careful analysis by the court and court authority to compel some degree of party participation, some matters will simply be unsuitable for an ADR service or practitioner. A decision by a practitioner not to provide an ADR process will need to be respected by the court referral process. An example of a legislative provision which makes this clear is s 32(1) of the *Dispute Resolution Centres Act 1990* (Qld) which expressly provides that the Director “may decline to consent to the acceptance of any dispute for mediation”

Another dimension to the question of who provides the ADR service is the professional background of the provider. One study suggested that lawyer mediators were less likely to act to equalise power imbalances than were social work mediators (Hanycz, 2002, citing Albert). Other research, reviewing divorce mediation, found no consistent differences when lawyer mediators were compared with social work mediators (Pearson, 1994: 74)

9 Data, Evaluation and Research

9.1 To what extent is there a need to improve the quality of available national data on ADR? What steps should be taken to identify the data required and improve data collection and research?

A potentially important source of empirical information about ADR in Australia is statistical data compiled by courts themselves. Unfortunately, reliable, comparable statistics about court use of ADR and the outcome and impact of court-annexed ADR programs are simply not available. Statistics about some aspects of ADR are sometime included in a court or tribunal's annual report, but they are not consistent across jurisdictions or over time.

In light of the many different programs, with many different features, which are reported in many different ways, it is simply not possible to compare information from court to court, or even within a court over time. For example, some courts report ADR referrals or orders, but not outcomes; others report the number of settlements but it is not clear how many were referred or what ADR processes were used. Even a statistical summary limited to the most basic measure—settlement rates—does not produce much useful information, as the referral practices are different, the processes are different, the measures of settlement are different (partial and full settlement may not be distinguished) and the point in time at which settlement is measured varies as well. Based on the NADRAC compilation in 2002, settlement rates in several courts with various ADR processes from roughly 1998-2001 appear to

range from 50% to 80%. Beyond that, there is really no national statistical consensus which can be reliably drawn.

Clearly, one future research direction is to develop useful statistical measures within each court's own data collection and to make these measures comparable across jurisdictions.

9.2 *To what extent is there a need to improve the quality of evaluations of ADR services? How can ADR services be evaluated, by whom and against what criteria?*

9.3 *What are the advantages and disadvantages of requiring service providers to commission independent evaluations of their services, and of requiring them to publish those evaluations?*

9.4 *What might be done to support ADR research and researchers?*

The first question evaluation must address is what does it mean for an ADR process to be successful, to be evaluated positively. There are many possible aspects or dimensions in which an ADR process could be called "successful". Regardless of the terminology, the starting point for any discussion must depend on the goal[s] the referral to ADR seeks to achieve, so that outcomes can be measured against those goals (David, 1994: 44).

It is important to be very specific about what information is actually evidence of achieving those goals, if we are to draw any lessons from research about success (Elix, 2003). These outcomes measures may, in turn, be able to be linked to an analysis of what factors caused the success or failure. Henderson points out that "the choice of a measure for mediation outcome may very well shape the range of variables put forth to explain mediation settlement" (1996: 121). To be more specific: "if outcome is defined as rate of settlement, then the explanatory variables used to explain outcome should differ from those used to explain outcome when outcome is defined as rate of compliance. Few studies recognise this issue." (Henderson, 1996: 124)

There are relatively few widely used success measures. The most frequently used include (Henderson, 1996: 121, citing Kressel and Pruitt, 1989): (Dot points added)

- [U]ser satisfaction
- [R]ates of compliance
- [R]ates of settlement
- [N]ature of agreements
- [E]fficiency
- [I]mprovement in the postdispute climate

In spite of the potential for more sophisticated measures of success, the actual measures used in evaluative research tend to be quite limited. The most frequently used are:

- settlement rates
- satisfaction (both for its own sake and as a proxy for quality of outcome).

This limited choice of outcome measures reflects, in part, the difficulty of empirical research in this area, including the difficulty of undertaking research over long

periods of time. This difficulty is equally true of research into civil litigation generally, which has not generally been subjected to the same degree of evaluation.

For further discussion of these issues, see Mack, *Court Referral to ADR: Criteria and Research* p 19-23, and Chapter 9. Attached as Appendix 2 is an outline for a literature review, along with a bibliography.

It is important to realise that not all research needs to be evaluative. Policy analysis and research are important as well. For example, LaFree notes the need for policy analysis on the question whether mediation is supposed to replicate court outcomes. If enforcing rights is important, then comparing ADR outcomes to adjudicated results is a valid measure of quality, but such a policy may limit the possibility of other outcomes for which mediation is valued (LaFree and Rack, 1996: 793). Astor (2001: 40-41) has also indicated the need for policy research, such as developing mechanisms for dealing effectively with mediator misconduct, in light of requirements of confidentiality and immunity protections (Kressel and Pruitt, 1989).

Other areas of policy research include the role of good faith participation, especially in mediation (Brazil, 2002; Lande, 2002) and the impact of ADR on judiciary and judicial behaviour. Garth (1997: 111) notes that the Rand research did not directly ask what were the implications for a judicial officer of a referral of a case to someone else. Such a referral ought to result in a savings of time for the judge, but how is that judicial time used? (Garth, 1997: 111)

In 2008, the QUT Law and Justice Journal published a special issue on ADR, which contains many examples of research which raises important policy questions.

There is also a need for good research about the civil justice system as a whole as well as ADR processes. (Australian Law Reform Commission, 1997; Kressel and Pruitt, 1989: 401). The lack of a benchmark or industry standard is a recurring problem in ADR research (Hanson and Becker, 2002: 173; Van Epps, 2002: 632-633). Whether the number and type of civil trials has fallen significantly needs to be examined for Australia, as has been done in the US (American Bar Association, 2003). If civil trials are vanishing, the significance of this for court referral to ADR must be considered.

Appendix 1: Goals for Court Connected ADR Programs

Hilary Astor suggests that goals for a court-connected ADR program might include (Astor 2001: 5):

- Reduce delay, clear lists, reduce the backlog of court/tribunal
- Assist in management of cases (which implies a question about the objectives of case management)
- Reduce cost (to parties; court; government; taxpayer)
- Are appropriate to the needs of the case/parties
- Are responsive to personal as well as business needs
- Produce fair, equitable outcomes in all the circumstances
- Achieve party satisfaction
- Produce enduring agreements
- Preserve ongoing relationships between the disputants
- Protect the interests of vulnerable third parties
- Preserve and, if possible, increase party respect for and confidence in the justice system
- Encourage parties to use alternative methods in the future
- Encourage parties to use ADR earlier, including pre-filing
- Achieve moral education/transformation
- Educate/encourage/respond to needs of legal profession
- Change the legal culture

Another similar list has been articulated by Wayne Brazil (Brazil 1999: 725-726; Nelson 2002: 9, citing Brazil; see also David 1994: 44-45) (dot points added):

- [A] desire to reduce cost and delay,
- to bring greater uniformity to case management,
- [To] establish judicial control of cases,
- [To] eliminate unnecessary discovery, and
- [To] create a system of accountability for judges and cases.
-
- [I]ncreasing the rationality, the fairness and the civility of the disputing process
- [E]xpanding the information base on which parties make key decisions in litigation and settlement;
- [R]educing parties' alienation from the justice system;
- [E]xpanding parties' opportunities to act constructively and

creatively;

- [H]elping parties understand and vent emotions, and
- [E]xpanding the parties' tools for dealing with the psychological, social and economic dynamics that always accompany, and sometimes drive litigation.

Alternatively, Brazil has stated that the ADR program in the Northern District of California states its "initial promise" in a more limited way: "While we cannot guarantee any particular set of results or effects, we promise to make a concerted and open-minded effort to determine whether something of net value to litigants can be delivered by incorporating into the broader judicial system some procedures from the emerging world of alternative dispute resolution" (Brazil 2006: 247-247).

Professor Jennifer David's list includes some institutional and organisational aspects of court connected ADR (dot points added; underlining in original) (David 1994: 44-45):

User satisfaction with the process, the outcome the mediator and the cost. "User" being the parties in dispute, the legal representative, and any organisations which the parties represent (if any). It also includes the Court and any other user

Durable settlements

Delivery of individualised "Justice"/fairness

Efficient case management for the court, particularly in relation to cost and time

Relief of the workload of judges and decision-makers within the system

Cost savings for the parties, their organisations (if any), the court and the government. "Cost" can include money for legal costs and for preparation. It can also include stress, lost opportunity, lost productivity and disturbed relationships.

Provision of a forum for disputants to meet face to face, to encourage open communication and to allow independent expert input

Improvement in the service to users of the court by making it more accessible, cheaper and comprehensible.

Earlier and speedier resolution of disputes

Utilisation of experts in the substantive area of the dispute and in the consensual process.

Reduction in the length, frequency and need for preparation by the parties, court staff and personnel.

Provision of training for court personnel and staff in consensual dispute processes, in skills of communication and in skills of mediation

Establishing quality control over the processes of the court

Ensuring the courts remain the primary formal dispute resolution institutions

Ensuring that lawyers retain their professional dominance of dispute resolution

Another way to think about goals is to identify the values which a referral to ADR can promote (Boulle 1996: 11):

- *Process*: the extent to which the parties are satisfied with the mediator's conduct of the mediation and their experience of the process and its fairness.
- *Efficiency*: the extent to which the process is cost - and time-effective and maximised the value of the outcome.
- *Empowerment*: the extent to which the mediation educates the parties about constructive problem solving and equips them to deal with disputes in the future.
- *Effectiveness*: the extent to which the mediation achieves a settlement outcome.
- *Durability*: the extent to which the mediation outcome endures over time.
- *Relationship*: the extent to which the mediation process increases understanding and improves the relationship between the parties.

A somewhat different approach is reflected in McAdoo and Welsh's statement of three goals, each with concrete objectives, derived from their study of many court connected ADR programs in the US (McAdoo and Welsh 2004) :

“For court-connected mediation to be considered successful, it must *help courts* deliver: (emphasis in original)

- (1) Substantive justice, including
 - Outcomes that are consistent with the rule of law
 - Outcomes that are responsive to litigant's needs
 - Outcomes that are consistent with parties' self-determination
 - Outcomes that are durable
 - Outcomes that maintain or improve relationships
 - Outcomes that the parties will perceive as fair
- (2) Procedural justice, including
 - A process that is perceived as fair by the parties
 - An opportunity for the parties to express their views (“voice”)
 - An opportunity for the parties' views to be heard and considered by someone involved in decision-making
 - Treatment that will be perceived by the parties as even-handed
 - Treatment that will be perceived by the parties as dignified and respectful
- (3) Efficient justice in an appropriate forum, including
 - Savings in time and costs for the parties

Savings in time and costs for courts
Shorter time periods between filing and deposition
A reduction in the number of court trials
Matching of the forum to the needs of the case and the litigants
An opportunity for parties to access the process they believe will be most appropriate for the resolution of their case

Appendix 2: Outline of a Literature Review

1. Policy statements or advice regarding court annexed ADR from a range of sources, for example:

- AIJA/ Hilary Astor (Astor 2001)
- Council of Chief Justices (Council of Chief Justices 1999)
- Commonwealth Attorney-General (Attorney-General's Department 2003)
- NADRAC, especially in relation to the setting up of the Federal Magistracy (National Alternative Dispute Resolution Advisory Council (NADRAC) 1999a; National Alternative Dispute Resolution Advisory Council (NADRAC) 1999b)
- Victorian Law Reform Commission (Victorian Law Reform Commission 2007: 28-32)

2. Guides or handbooks for developing court annexed ADR programs such as:

- Stienstra and Yates *ADR Handbook for Judges* (ABA 2004)
- Center for Dispute Settlement, and Institute of Judicial Administration, "National Standards for Court-Connected Mediation Programs." (State Justice Institute)
- Sourdin, Tania, Marilyn Scott, and Jennifer David, "Court-Connected Mediation: National Best Practice Guidelines: Draft for Comment." (UTS: Centre for Dispute Resolution 1994).
- Hays, Steven W, and Cole Blease Graham (Eds.), *Handbook of Court Administration and Management*.

3. Evaluation studies of specific programs, concentrating on civil litigation, including:

- Large scale, eg the Rand study of US Federal Courts (Kakalik et al. 1996)
- Smaller scale:
 - in the UK (Genn 2002; Genn et al. 2007)
 - in Canada (Macfarlane 1995; Hann and Baar 2001)
 - in the US (Wissler 2002; Clarke and Gordon 1997; Press 1998; Welsh 1998)
 - in Australia (Cannon 1997; Delaney and Wright 1997; Sourdin and Matruglio forthcoming)

4. Reviews of a large number of studies, eg:

- US state and federal programs (Bergman and Bickerman 1998)
- ADR in civil cases in the US (Wissler 2002)
- An overview of research (Mack 2003)

5. Recent reflective considerations of court-annexed ADR programs, exploring concerns of principle as well as about practical effectiveness in light of 20+ years of US programs, in particular, articles by Brazil (1999; 2002; 2006) and McAdoo (2007; McAdoo and Welsh 2004)

Bibliography

- Astor, Hilary. 2001. *Quality in Court Connected Mediation Programs: An Issues Paper*. Carlton: Australian Institute of Judicial Administration Incorporated.
- Astor, Hilary, and Christine Chinkin. 2002. *Dispute Resolution in Australia*. Sydney: LexisNexis Butterworths.
- Attorney-General's Department. 2003. "Federal Civil Justice System Strategy Paper." Australian Government.
- Bergman, Edward, and John Bickerman (Eds.). 1998. *Court-Annexed Mediation: Critical Perspectives on Selected State and Federal Programs*. Bethesda, Maryland: Pike & Fischer Inc.
- Boulle, Laurence. 1996. *Mediation: Skills and Techniques*. Sydney: Butterworths.
- Brazil, Wayne D. 1999. "Comparing Structures for the Delivery of ADR Services by Courts: Critical Values and Concerns." *Ohio State Journal on Dispute Resolution* 14:715.
- Brazil, Wayne D. 2002. "Court ADR 25 Years after Pound: Have We Found a Better Way?" *Ohio State Journal on Dispute Resolution* 18:93.
- Brazil, Wayne D. 2006. "Should Court-Sponsored ADR Survive?" *Ohio State Journal on Dispute Resolution* 21:241-279.
- Cannon, Andrew. 1997. "An Evaluation of the Mediation Trial in the Adelaide Civil Registry." *Journal of Judicial Administration* 7:50.
- Center for Dispute Settlement, and Institute of Judicial Administration. 2004. "National Standards for Court-Connected Mediation Programs." State Justice Institute.
- Clarke, Stevens H, and Elizabeth Ellen Gordon. 1997. "Public Sponsorship of Private Settling: Court-Ordered Civil Case Mediation." *The Justice System Journal* 19:311.
- Council of Chief Justices. 1999. "Australian and New Zealand Council of Chief Justices: Position Paper and Declaration of Principle: Court-Annexed Mediation." Council of Chief Justices.
- David, Jennifer. 1994. "Options for Designing and Implementing a Court Connected Mediation System." in *Court Connected Mediation: National Best Practice Guidelines*, edited by Tania Sourdin, Marilyn Scott, and Jennifer David. Sydney: University of Technology.
- Delaney, Marie, and Ted Wright. 1997. *Plaintiffs' Satisfaction with Dispute Resolution Processes: Trial, Arbitration, Pre-Trial Conference and Mediation*. Sydney: Justice Research Centre.
- Dywan, Jeffery J. 2003. "An Evaluation of the Effect of Court Ordered Mediation and Proactive Case Management on the Pace of Civil Tort Litigation in Lake County, Indiana." Pp. 239-254 in *Journal of Dispute Resolution*.
- Genn, Hazel. 2002. "Court-Based ADR Initiatives for Non-Family Civil Disputes: The Commercial Court and the Court of Appeal." Lord Chancellor's Department Research Secretariat.
- Genn, Hazel, Paul Fenn, Marc Mason, Andrew Lane, Nadia Bechai, Lauren Gray, and Dev Vencappa. 2007. *Twisting Arms: Court Referred and Court Linked Mediation under Judicial Pressure*. London.
- Hann, Robert G, and Carl Baar. 2001. "Evaluation of the Ontario Mandatory Mediation Program (Rule 24.1): Executive Summary and Recommendations." Ontario, Canada: Queen's Printer.

- Hensler, Deborah R. 2002. "Suppose It's Not True: Challenging Mediation Ideology." *Journal of Dispute Resolution*:81-99.
- Kakalik, James S, Terence Dunworth, Laural A Hill, Daniel McCaffrey, Marian Oshiro, Nicholas M Pace, and Mary E Vaiana. 1996. *An Evaluation of Mediation and Early Neutral Evaluation under the Civil Justice Reform Act*. Santa Monica, CA: Rand.
- Kakalik, James S, Terence Dunworth, Laural A Hill, Daniel McCaffrey, Marian Oshiro, Nicholas M Pace, and Mary E Vaiana. 2000. "Just, Speedy and Expensive? An Evaluation of Judicial Case Management under the Civil Justice Reform Act." Rand.
- Macfarlane, Julie. 1995. *Court Based Mediation for Civil Cases: An Evaluation of the Ontario Court (General Division) Adr Centre*. Toronto: Queen's Printer for Ontario.
- Mack, Kathy. 2003. "Court Referral to Adr: Criteria and Research." Melbourne: AIJA & NADRAC.
- McAdoo, Bobbi. 2007. "All Rise, the Court Is in Session: What Judges Say About Court-Connected Mediation." *Ohio State Journal on Dispute Resolution* 22.
- McAdoo, Bobbi, and Nancy A. Welsh. 2004. "Look before You Leap and Keep on Looking: Lessons from the Institutionalization of Court-Connected Mediation." *Nevada Law Journal* 5:399-432.
- National Alternative Dispute Resolution Advisory Council (NADRAC). 1999a. "The Use of Alternative Dispute Resolution in a Federal Magistracy."
- National Alternative Dispute Resolution Advisory Council (NADRAC). 1999b. "The Use of Alternative Dispute Resolution in a Federal Magistracy: Part 2: Regulations and Rules of Court."
- National Alternative Dispute Resolution Advisory Council (NADRAC). 2006. "Legislating for Alternative Dispute Resolution: A Guide for Government Policy-Makers and Legal Drafters." Commonwealth of Australia.
- Nelson, Dorothy Wright. 2002. "Adr in the Federal Courts - One Judge's Perspective." *Ohio State Journal on Dispute Resolution* 17:1.
- Pearson, Jessica A. 1994. "Family Mediation." in *National Symposium on Court-Connected Dispute Resolution Research: A Report on Current Research Findings - Implications for Courts and Future Research*, edited by Susan Keilitz: State Justice Institute.
- Press, Sharon. 1998. "Florida's Court-Connected State Mediation Program." in *Court-Annexed Mediation: Critical Perspectives on Selected State and Federal Programs*, edited by Edward J Bergman and John G Bickerman. Bethesda, Maryland: Pike & Fischer Inc.
- Resnik, Judith. 2002. "Mediating Preferences: Litigant Preferences for Process and Judicial Preferences for Settlement." *Journal of Dispute Resolution*:155-169.
- Sander, Frank E A, and Stephen B Goldberg. 1994. "Fitting the Forum to the Fuss: A User-Friendly Guide to Selecting an Adr Procedure." *Negotiation Journal* 10:49.
- Sourdin, Tania, and Tania Matruglio. forthcoming. *Evaluating Mediation - New South Wales Settlement Scheme 2002*: La Trobe University, University of Western Sydney.
- Victorian Law Reform Commission. 2007. "Civil Justice Enquiry: Summary of Draft Civil Justice Reform Proposals as at 28 June 2007: Exposure Draft for Comment." Victorian Law Reform Commission.

- Welsh, Nancy A. 1998. "Alternative Dispute Resolution in Minnesota - an Update on Rule 114." in *Court-Annexed Mediation: Critical Perspectives on Selected State and Federal Programs*, edited by Edward J Bergman and John G Bickerman. Bethesda, Maryland: Pike & Fischer Inc.
- Wissler, Roselle L. 2002. "Court Connected Mediation in General Civil Cases: What We Know from Empirical Research." *Ohio State Journal on Dispute Resolution* 17:641.
- Wissler, Roselle L. 2004. "The Effectiveness of Court-Connected Dispute Resolution in Civil Cases." *Conflict Resolution Quarterly* 22:55-87.